

Village of Biscayne Park

640 NE 114th Street
Biscayne Park, FL 33161
(305) 899-8000

Mayor and Commission

John R. Hornbuckle
Mayor

Steve Bernard
Vice-Mayor

Robert "Bob" Anderson
Commissioner

Kelly Mallette
Commissioner

Chester H. Morris, M.D.
Commissioner

Frank R. Spence
Village Manager

John J. Hearn
Village Attorney

Ann Harper
Village Clerk

AGENDA

REGULAR COMMISSION MEETING

Ed Burke Recreation Center – 11400 NE 9th Court
Tuesday, March 4, 2008 - 7:00 pm

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS RELATED TO AGENDA ITEMS

1. PRESENTATIONS AND PROCLAMATIONS

A. Proclamation designating April 2008 as Water Conservation Month

2. ADDITIONS, DELETIONS OR WITHDRAWALS TO AGENDA

3. CONSENT AGENDA (Motion to be made for all as one or remove for discussion) Tab #3

A. Approval of Minutes – Regular Meeting February 5, 2008

TBS

B. Approval of Monthly Budget to Actual Statement January 2008

4. PUBLIC HEARINGS – TAB #4

A. SECOND READING OF ORDINANCES

ORDINANCE NO. 2008-1R

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, GRANTING FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO THE VILLAGE OF BISCAYNE PARK, FLORIDA; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE

Village of Biscayne Park - Agenda

B. VARIANCES

(1) Catherine Brajdic , 890 NE 117th Street, requests a variance to install a six foot (6') wood fence on a portion of the property line on a corner lot where the code does not permit installation. (Planning & Zoning Board recommended approval on 10/22/07.) (Deferred from Commission meeting February 5, 2008.)

C. EVALUATION AND APPRAISAL REPORT

Transmittal Public Hearing to discuss and hear public comments on the proposed amendments to the Evaluation and Appraisal Report of the Comprehensive Plan, pursuant to the requirements of Florida Statutes 163.3191. To be presented by Bell David Planning Group (HARD COPY OF THE E.A.R. PREVIOUSLY DISTRIBUTED)

5. ORDINANCES – FIRST READING – TAB #5

TBS

A. ORDINANCE 2008-2

AN ORDINANCE OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, ADOPTING AND TRANSMITTING THE 2008 EVALUATION AND APPRAISAL REPORT OF THE VILLAGE'S COMPREHENSIVE PLAN FOR REVIEW AND COMMENT AND REQUESTING THAT THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS DELEGATE THE SUFFICIENCY REVIEW OF THE EVALUATION AND APPRAISAL REPORT (EAR) OF THE CITY'S COMPREHENSIVE PLAN TO THE SOUTH FLORIDA REGIONAL PLANNING COUNCIL (SFRPC) PURSUANT TO THE PROVISIONS OF THE LOCAL GOVERNMENT COMPREHENSIVE PLANNING AND LAND DEVELOPMENT REGULATIONS ACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE

6. RESOLUTIONS – TAB #6

TBS

A. RESOLUTION 2008-2

A RESOLUTION REQUESTING TRANSFERRING THE \$356,000 OF COUNTY COMMITTED GENERAL OBLIGATION BOND (GOB) MONEY FROM THE DESIGNATED NEW VILLAGE HALL TO BUILD A NEW PUBLIC WORKS FACILITY

7. OLD BUSINESS – TAB #7

- A. Third District Court of Appeals confirms and upholds lower Court ruling in favor of the Village of Biscayne Park vs. Robert Brumm, et al.
- B. Appointment of members to Village's 75th Anniversary Committee (Mayor Hornbuckle)
- C. Appointment of members to Code Review Committee
- D. Status report of community information event held on Saturday, February 23, 2008 (Vice-Mayor Bernard)

Village of Biscayne Park - Agenda

8. NEW BUSINESS – TAB #8

- A. Consideration of proposal from Kimley-Horn and Associates, Inc., for a Crime Prevention Through Environmental Design (CEPTED) Study**
- B. Request approval for use of Federal Forfeiture Funds to pay \$3,295 tuition for Captain Tony Sanchez to attend Southern Command Training School**
- C. Request approval for Village Manager to attend the Florida City & County Managers Association Annual Conference on May 28 – 31, 2008, at Marco Island**
- D. Recommendation that property owners who plan to work on lawn sprinklers during hours which are not allowed give 48 hours notice to Code Enforcement Officer (Commissioner Anderson)**
- E. Recommendation that the Village request the City of North Miami eliminate the credit card fee for payment of water bill (Commissioner Anderson)**

9. GOOD AND WELFARE (PUBLIC)

10. REPORTS – TAB #10

A. Committee Reports

- 1. Star gazing Group – Brett Shinn**
- 2. Parks and Parkways - Dan Keys**

B. Village Attorney Comments

C. Village Manager Comments

- 1. Report from Police Chief Glansberg**
- 2. Report on sale of Surplus Equipment**

D. Commission Comments

- 1. Commissioner Anderson**
- 2. Commissioner Mallette**
- 3. Commissioner Morris**
- 4. Vice-Mayor Bernard**
- 5. Mayor Hornbuckle**

11. ANNOUNCEMENTS -All public meetings are held at the Ed Burke Recreation Center 11400 NE 9th Court

- *Wednesday, March 5**
- *Monday, March 10**
- *Tuesday, March 18**
- *Monday, March 31**
- *Tuesday, April 1**

- Parks & Parkways Board at 6:30 pm**
- Planning and Zoning Board at 6:30 pm**
- Code Enforcement Board at 7:00 pm**
- Planning and Zoning Board at 6:30 pm**
- Regular Commission Meeting 7:00 pm**

Village of Biscayne Park - Agenda

12. ADJOURMENT - NOTE: TBS = To Be Submitted

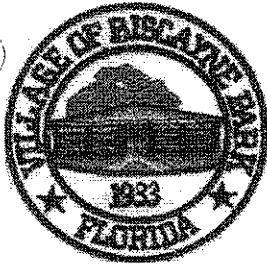
Visit our website at www.biscayneparkfl.gov

In accordance with the provisions of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in the proceedings should call Village Hall at (305) 899-8000 no later than (4) days prior to the proceeding for assistance.

DECORUM

Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission, shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the Commission members present. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chambers. Please mute or turn off your cell phone or pager at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chamber shall do so quietly.



Village of Biscayne Park

MINUTES

REGULAR MEETING

Ed Burke Recreation Center – 11400 NE 9th Court

Tuesday, March 4, 2008 - 7:00 pm

Mayor Hornbuckle called the meeting to order at 7:05 p.m. In addition to Mayor Hornbuckle, present were Vice-Mayor Steve Bernard and Commissioners Bob Anderson, Kelly Mallette, and Dr. Chester Morris. Present from Staff were Frank Spence, Village Manager; John Hearn, Village Attorney; Holly Hugdahl, Acting Finance Director; Mitchell Glansberg, Police Chief; Bernard Pratt, Public Works Director; Elisa Tankersley, Recreation Director; Arlenis Silvera, Building Clerk, and Ann Harper, Village Clerk.

Vice-Mayor Bernard led the Pledge of Allegiance, which was followed by a moment of silence.

Mayor Hornbuckle moved agenda item 4A to the beginning of the meeting

Mayor Hornbuckle stated that a group of people in the audience are here to address issues regarding renewal of the Florida Power & Light Contract. He said that a request was received from Aletha Player of FPL to defer second reading of the renewal ordinance to a future meeting because they are reevaluating and amending sections of the agreement.

4. PUBLIC HEARINGS – TAB #4

A. SECOND READING OF ORDINANCES

ORDINANCE NO. 2008-1R

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, GRANTING FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO THE VILLAGE OF BISCAYNE PARK, FLORIDA; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE

Attorney Hearn read the title of the Ordinance and said the Commission could hold the Public Hearing or make a motion to defer. Mayor Hornbuckle said there would be Commission discussion first before the Public Hearing.

Commissioner Morris made a motion to disapprove the entire ordinance. Vice-Mayor Bernard seconded the motion.

Attorney Hearn said that motion should not be voted on. A motion to approve or disapprove should be made after the Public Hearing.

Commissioner Mallette made a motion to defer because FPL is not here. Commissioner Anderson seconded the motion because he is asking for a "most favored nation" clause.

Mayor Hornbuckle said there has been confusion about issues. Since FPL is negotiating in good faith, it is only appropriate that we listen to what they have to say at the next meeting. At that time we can decide whether or not to enter the contract.

Commissioner Morris spoke about his concern for high power lines. Commissioner Mallette said State law governs where the lines are placed, and it is unrealistic and not consistent with State law for a city to have something in their contract about the high power lines.

Attorney Hearn suggested inviting FPL to a workshop before the next reading of the ordinance. Commissioner Mallette agreed.

Vice-Mayor Bernard suggested working with Miami Shores and El Portal in an effort to negotiate as a block. The second reading of the ordinance should be deferred for a long time because it is our job to protect the Village.

Commissioner Mallette said the workshop should be for informational purposes only, not to tear apart the contract.

Commissioner Morris said he feels like he is being rushed, and the Village has two years to negotiate.

Vice-Mayor Bernard said we may get a better deal if we wait until other cities have signed and see what they negotiated.

Commissioner Mallette said even if we don't sign the contract, they will still provide service, but we will not receive the franchise fee.

Mr. Spence recommended that action on the ordinance be deferred, and he and Attorney Hearn will continue to negotiate with FPL.

Attorney Hearn said this is not your typical contract because we cannot go to another vendor. They have a willingness to negotiate on some items.

Commissioner Mallette made a motion to defer second reading to May 6, 2008. Commissioner Anderson seconded the motion. The motion carried by voice vote, 4/1 with Vice-Mayor Bernard voting no.

Mayor Hornbuckle opened the meeting for public comments.

PUBLIC COMMENTS RELATED TO AGENDA ITEMS

Harvey Bilt commented that workshops are for people to make their voices heard.

James Murphy said that a committee should be formed to "take apart" the FPL contract.

Judi Hamelburg thanked Attorney Hearn for winning the Charter Lawsuit and said the Village should try to recover the costs from the people who filed the lawsuit.

Jennifer Bellinson of Miami Shores said the Village should negotiate with FPL along with Miami Shores and not to be in a rush to sign a renewal contract.

Linda Domin spoke against renewing the FPL franchise.

Lisa Peterson spoke in favor of approving the CPTED program.

Clemet Hall said the Village should wait to negotiate the FPL contract.

Dan Keys said the Village needs to form a coalition with other cities to negotiate with FPL.

Roxann Ross said the terms of the FPL contract should not be left to the Manager and Attorney; the attorney should formalize the contract.

1. PRESENTATIONS AND PROCLAMATIONS

A. Proclamation designating April 2008 as Water Conservation Month

Mayor Hornbuckle announced that the Proclamation was prepared and signed.

2. ADDITIONS, DELETIONS OR WITHDRAWALS TO AGENDA

Mr. Spence added item 8F – Approval of Safe Neighborhood agreement with Miami-Dade County for \$25,000 matching funds for the pavilion at Recreation.

Commissioner Mallette added item 8G – Requiring the Manager to make a recommendation on each agenda item.

Commissioner Anderson added item 8H – Appointment of alternate member to Parks & Parkways Advisory Board.

Attorney Hearn said items 4C– Public Hearing – and 5A – Ordinance – will be combined and heard as one item.

3. CONSENT AGENDA (Motion to be made for all as one or remove move for discussion) Tab #3

A. Approval of Minutes – Regular Meeting February 5, 2008

B. Approval of Monthly Budget to Actual Statement January 2008

Vice-Mayor Bernard said he would like to remove 3A, Approval of Minutes, from the Consent Agenda for discussion.

Vice-Mayor Bernard referred to his notes which were distributed to the Commissioners at the beginning of the meeting. He said these notes are verbatim transcripts of portions of the February minutes, and he would like these attached to the minutes as an addendum. Commissioner Mallette said the remarks should be summarized, not attached as verbatim.

Motion was made by Vice-Mayor Bernard, second by Commissioner Anderson, to amend the February minutes by adding the verbatim notes as summarized. The motion carried by voice vote, 5/0.

Motion was made by Commissioner Anderson, seconded by Commissioner Morris, to approve the January 2008 statements. The motion carried by voice vote, 4/0.

4. PUBLIC HEARINGS – TAB #4

B. VARIANCES

(1) Catherine Brajdic , 890 NE 117th Street, requests a variance to install a six foot (6') wood fence on a portion of the property line on a corner lot where the code does not permit installation. (Planning & Zoning Board recommended approval on 10/22/07.) (Deferred from Commission meeting February 5, 2008.)

Attorney Hearn read the title of the Variance and reminded everyone that this is a quasi judicial hearing. He reviewed the findings and recommendations of the Planning and Zoning Board and outlined a new procedure for processing variances. The Building Clerk will contact the Attorney when applicants request variances, and the Attorney will review the request and assure that the petitioner defines the request before the application is heard by the Planning & Zoning Board. All known violations will be addressed before the variance. Attorney Hearn swore in those who would be testifying.

Attorney Hearn said there is an encroachment on the property which has not been addressed. The house was built in the 1940's. The title insurance did not address it as an encroachment. We do not know what the setback code requirements were in the 1940's. Other than the encroachment, this variance request is for a six-foot wood fence.

Catherine Brajdic said she just wants to close in the driveway and use the back yard and she prefers option 2 with the sliding gate.

Sal Annese, Building Official, said the house was built in 1942 and was probably according to the code at that time, so it is nonconforming by the code today. Attorney Hearn said the house is a legal, nonconforming structure.

Mayor Hornbuckle opened the Public Hearing.

Dan Keys said accepting this house as a legal nonconforming structure is a bigger precedent than the decision which will be made on the fence. He said he did not see the location of the septic tank on the plans.

There were no more speakers, and the Public Hearing was closed.

In response to Vice-Mayor Bernard's question, Attorney Hearn said the Commission is moving forward with a decision on the fence. If there were a violation of any kind, the Commission would not move forward with the variance request. You recognize that nothing needs to be cited.

Commissioner Anderson said he favored option 1 for the fence because the gate on option 2 is a safety hazard.

Vice-Mayor Bernard said there is a problem because he does not know the location of the septic tank and drain field.

Commissioner Morris commented that option 1 seems safer than option 2.

Commissioner Mallette suggested making a motion to approve one of the options with the condition that it be installed as close to where the drainfield ends as possible.

Motion was made by Commissioner Anderson, seconded by Commissioner Morris, to approve option 1 for the fence; the portion of the fence to the which is parallel to NE 9th Avenue will be as far west from the property line as the drainfield permits and it will be behind the existing hedge. The motion carried by voice vote, 5/0.

C. EVALUATION AND APPRAISAL REPORT

**Transmittal Public Hearing to discuss and hear public comments on the proposed amendments to the Evaluation and Appraisal Report of the Comprehensive Plan, pursuant to the requirements of Florida Statutes 163.3191. To be presented by Bell David Planning Group
(HARD COPY OF THE E.A.R. PREVIOUSLY DISTRIBUTED)**

5. ORDINANCES – FIRST READING – TAB #5

A. ORDINANCE 2008-2

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Attorney Hearn read the title of the Ordinance and said this was the Transmittal Hearing for the Evaluation and Appraisal Report. Mayor Hornbuckle opened the Public Hearing.

Dan Keys said this was a unique opportunity to speak on first reading of an ordinance, and he would like to hear from the Commissioners.

There were no more speakers, and the Public Hearing was closed.

Jerry Bell, representing Bell David Planning Group, reviewed the key recommendations and pre-transmittal revisions. He asked that the Ordinance be approved on first reading and said it will come back in thirty days.

In response to Vice-Mayor Bernard's question, Mr. Bell said there is a recommendation to change local roads from Level A to Level B.

Motion was made by Commissioner Morris, seconded by Commissioner Anderson, to approve the Ordinance on first reading and schedule second reading when it is returned to the Village. The motion carried by roll-call vote, as follows:

AYES: Commissioners Anderson, Mallette, and Morris; Vice-Mayor Bernard, and Mayor Hornbuckle.

NAYS: None.

6. RESOLUTIONS – TAB #6

A. RESOLUTION 2008-2

A RESOLUTION REQUESTING TRANSFERRING THE \$356,000 OF COUNTY COMMITTED GENERAL OBLIGATION BOND (GOB) MONEY FROM THE DESIGNATED NEW VILLAGE HALL TO BUILD A NEW PUBLIC WORKS FACILITY

Mr. Spence said the County has given an entitlement to the Village of \$350,000. We contacted them and they said we could transfer it to a Public Works facility. The Public Works employees are working in a ramshackle trailer and a new facility is needed. We recommend the resolution be approved and the Manager authorized to circulate a plan to the Commissioners to see what they would like.

Mayor Hornbuckle asked how this would affect Village Hall. Mr. Spence said we are making a commitment for the greatest need.

Commissioner Anderson asked whether or not there would be a time limit for completion.

Mrs. Hugdahl said we are getting use of the funds, and we won't go to contract until we are ready to build. Once we are under construction, we have eighteen months for completion.

Commissioner Morris said it is a disgrace that employees are working under the conditions that exist in the trailer, which is falling apart.

Commissioner Mallette said she agrees with the need for a new place, but the land where Public Works is located is our only valuable piece of property. She said it could be sold for housing and the funds used for beautification projects. She asked that a report be given on the feasibility of using other property for Public Works.

In response to Vice-Mayor Bernard's question, Mr. Spence said this Resolution is to transfer funds and authorize building on the Public Works site.

Commissioner Mallette suggested that we could "swap" land parcels and look at other feasible options and what other cities have done.

Commissioner Morris said using other property would require operating funds to provide security for equipment which would be stored there. Also, he does not think that anyone would put up palatial homes on the old public works property. It may be years before the real estate market comes back, and we need to move ahead.

Mayor Hornbuckle said our request to the County for other locations and other options should be pursued.

Motion was made by Commissioner Morris, seconded by Vice-Mayor Bernard, to approve the Resolution and request the County advise us of alternate locations and work with existing building plans. The motion carried by voice vote, 5/0.

7. OLD BUSINESS – TAB #7

A. Third District Court of Appeals confirms and upholds lower Court ruling in favor of the Village of Biscayne Park vs. Robert Brumm, et al.

Attorney Hearn said the "cloud" which was hanging over the lawsuit is over and we will now pursue all costs that are collectible, which does not include attorney fees. Mayor Hornbuckle thanked the Attorney for his successful work on the case.

B. Appointment of members to Village's 75th Anniversary Committee (Mayor Hornbuckle)

It was decided that the first committee meeting will be on March 25. The Mayor and Commissioners gave the names of people who are interested in participating on the committee to the Village Clerk.

C. Appointment of members to Code Review Committee

Commissioner Anderson commented that members of the Code Enforcement Board and Planning & Zoning Board are automatically assigned to this committee and asked whether or not Commissioners will be able to appoint additional members.

Commissioner Mallette said there should be a time limit for this Board to operate.

Commissioner Morris said he has reviewed the code and will take at least six months for the committee to do a review.

Vice-Mayor Bernard said committee members should look at different sections of the code.

Commissioner Anderson said the committee should furnish a report to the Commission in six months.

Attorney Hearn said most committees have a specific number of members, usually not to exceed fifteen. People on the Code Enforcement and Planning & Zoning Boards who do not wish to be on the code review committee can refuse.

D. Status report of community information event held on Saturday, February 23, 2008 (Vice-Mayor Bernard)

Vice-Mayor Bernard reviewed the cost of the event, which was attended by sixty to seventy people.

8. NEW BUSINESS – TAB #8

A. Consideration of proposal from Kimley-Horn and Associates, Inc., for a Crime Prevention Through Environmental Design (CEPTED) Study

Mr. Spence read the backup memorandum into the record, and it is attached to the minutes. He introduced Greg Kyle of Kimley-Horn who reviewed the proposal, consisting of three parts: data collection of crime, traffic, and lighting statistics, inventory and analysis, and strategic implementation plan. Cost of the study is \$39,200.

Attorney Hearn referenced the 2004 agreement with Kimley-Horn which was awarded after competitive bids and said he would review it to see if this study can be included in the scope.

In response to Commissioner Mallette's question, Mr. Spence said we have CITT funds to cover the cost.

In response to Commissioner Anderson's question, Mr. Kyle said traffic counts will be taken when school is in session and will make allowances for increases in the winter months.

Motion was made by Commissioner Anderson, seconded by Commissioner Mallette, to move forward with the study contingent upon review by Attorney Hearn. The motion carried by voice vote, 5/0.

B. Request approval for use of Federal Forfeiture Funds to pay \$3,295 tuition for Captain Tony Sanchez to attend Southern Command Training School

Mr. Spence said this is an appropriate use of Forfeiture Funds, and this is public notice of the expenditure.

Motion was made by Commissioner Anderson, seconded by Commissioner Morris, to approve the request. The motion carried by voice vote, 5/0.

C. Request approval for Village Manager to attend the Florida City & County Managers Association Annual Conference on May 28 – 31, 2008, at Marco Island

Motion was made by Commissioner Anderson, seconded by Commissioner Morris, to approve. The motion carried by voice vote, 5/0.

D. Recommendation that property owners who plan to work on lawn sprinklers during hours which are not allowed give 48 hours notice to Code Enforcement Officer (Commissioner Anderson)

Commissioner Anderson said many people have come before the Code Enforcement Board for violations of water restrictions. There is a problem when people are working on their sprinkler systems because the officer cannot see the person who is doing the work and only sees that the sprinklers are running. He suggested a process be established in which the person who is going to work on the sprinklers can notify the Code Enforcement Officer in advance that the work will be going on. There was Commission consensus on this suggestion.

E. Recommendation that the Village request the City of North Miami eliminate the credit card fee for payment of water bill (Commissioner Anderson)

The Commission consensus was to ask the Village Manager to write a "polite" letter to the North Miami Manager requesting that this fee be waived.

F. Approval of Safe Neighborhood agreement with Miami-Dade County for \$25,000 matching funds for the pavilion at Recreation.

Mr. Spence said this agreement must be executed in order to receive funds from the pavilion to be placed at Recreation.

Motion was made by Commissioner Mallette, seconded by Commissioner Morris, to approve the agreement and authorize appropriate officials to sign. The motion carried by voice vote, 5/0.

G. Requiring the Manager to make a recommendation on each agenda item.

Commissioner Mallette said the Manager should provide a memorandum to accompany each agenda item with his recommendation for approval or denial. Mr. Spence agreed and said there would be no problem with providing such a memorandum with a recommendation and staff assignment.

H. Appointment of alternate member to Parks & Parkways Advisory Board.

Commissioner Anderson recommended the appointment of Jane Ashley as an Alternate on the Parks and Parkways Advisory Board. There was Commission agreement on the appointment.

In response to questions from Commissioner Morris and the Mayor, Mr. Spence said a person who is appointed to membership on an advisory board serves on that board as long as the Commissioner who made the appointment is in office. The successor (to the Commissioner who is no longer in office) then appoints a replacement. Mayor Hornbuckle recommended that a policy be established that the Commissioner who makes the replacement appointment give "strong consideration" to appointing the person serving as Alternate to the permanent position. This was approved by consensus.

9. GOOD AND WELFARE (PUBLIC)

Dan Keys spoke about a Parks and Parkways Board issue. He said that the Board recommends the Village should not accept the Forestry Grant which requires matching funds for the arborist.

Valerie Mallette said the Village should keep the Public Works garbage trucks at a location outside of the Village.

Clement Hall said the Village should continue to utilize the Public Works property as it is presently used.

10. REPORTS – TAB #10

A. Committee Reports

- 1. Star gazing Group – Brett Shinn – no report**
- 2. Parks and Parkways - Dan Keys**

Mr. Spence said the Parks and Parkways Board recommends releasing the matching funds available from the Forestry grant which will not be accepted and using those matching funds to purchase trees.

B. Village Attorney Comments

Attorney Hearn said a meeting will be held Monday, March 10, 4 p.m., to discuss the PBA contract with union officials and the Manager.

C. Village Manager Comments

- 1. Report from Police Chief Glansberg**
- 2. Report on sale of Surplus Equipment**

Mr. Spence said surplus vehicles were sold by the County. There was one bid on the car, which was \$250. Six or eight bids were received for the garbage truck.

Mr. Spence also reported (1) One Police officer who has been on Workers' Compensation will be returning to work; (2) the entry sign is being reviewed, and when approved will go out to bid; (3) cost of the NOMI bus service is being increased by 20%.

D. Commission Comments

- 1. Commissioner Anderson** asked for an update on the fire hydrant survey and the map of locations for Police cars.
- 2. Commissioner Mallette** – no comments
- 3. Commissioner Morris** spoke of the success of the Crime Watch program and suggested that all Commissioners participate.
- 4. Vice-Mayor Bernard** asked about the current limited time to use the basketball court. Mr. Spence responded that Recreation Department places a "club" on the hoops at sunset and Public Works unlocks it at 7:30 a.m.
- 5. Mayor Hornbuckle** spoke about the FPL agreement.

11. ANNOUNCEMENTS -All public meetings are held at the Ed Burke Recreation Center 11400 NE 9th Court


***Wednesday, March 5**
***Monday, March 10**
***Tuesday, March 18**
***Monday, March 31**
***Tuesday, April 1**

Parks & Parkways Board at 6:30 pm
Planning and Zoning Board at 6:30 pm
Code Enforcement Board at 7:00 pm
Planning and Zoning Board at 6:30 pm
Regular Commission Meeting 7:00 pm

There being no further business to come before the Commission, the meeting was adjourned at 11:00 p.m.

Commission approved: __May 6, 2008__

Attest:



John R. Hornbuckle, Mayor



Ann Harper, Village Clerk



VILLAGE OF BISCAYNE PARK

**Office of Village Manager
Frank R. Spence**

MEMORANDUM

TO: Mayor Hornbuckle and Commissioners

DATE: February 27, 2008

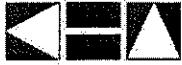
FROM: Frank R. Spence 
Village Manager

SUBJECT: PROPOSAL FROM KIMLEY-HORN TO DO A
CRIME PREVENTION THROUGH
ENVIRONMENTAL DESIGN (CPTED) STUDY

In response to suggestions that we update our traffic study previously done by the firm of Kimley-Horn to more specifically address certain problems in the Village, like cut-throughs, and requests to close certain streets, and improve pedestrian safety, and homeowners' safety, I requested Kimley-Horn to give us a proposal to study some of these problems. What they have proposed is attached and represents the state-of-the-art in comprehensive planning. It is called a CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED) study. It addresses crime, lighting, traffic, and maintenance/condition of the public right-of-way and private property.

The proposal is in three phases and has a total proposed cost of \$39,200. We are negotiating some type of reduction in scope and cost and hope to have some revised figures by Tuesday night's meeting.

8A



Kimley-Horn
and Associates, Inc.

February 25, 2008

■
Suite 109
5200 N.W. 33rd Avenue
Ft. Lauderdale, Florida
33309

Mr. Frank Spence
Village Manager
Village of Biscayne Park
640 NE 114th Street
Biscayne Park, FL 33161

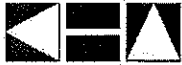
**Re: *Village of Biscayne Park
Preliminary Crime Prevention through Environmental Design
(CPTED) Study***

Kimley-Horn and Associates, Inc. ("KHA" or "the Consultant") is pleased to submit this letter agreement (the "Agreement") to the Village of Biscayne Park (the "Client") for consulting services. Our project understanding, scope of services, schedule, and fee are below.

PROJECT UNDERSTANDING

The Village of Biscayne Park, sometimes referred to as the "Village of Homes" in reference to the fact that virtually the entire 0.64-square mile Village is comprised of residences, is nestled between the Biscayne Canal and the Florida East Coast (FEC) Railroad in northern Miami-Dade County. To enhance the quality of life for its residents, the Village seeks to take proactive steps to prevent crimes, manage traffic concerns, and create a pedestrian friendly environment. The Village of Biscayne Park would like to initiate a Crime Prevention through Environmental Design (CPTED) study to accomplish the above-mentioned objectives. CPTED is defined by the National Crime Prevention Institute as applying proper design and effective use of the built environment to reduce fear and the incidence of crime, and improve quality of life. KHA has developed CPTED plans for neighborhoods of similar geographic size including the Dania Beach Heights neighborhood.

Kimley-Horn and Associates, Inc. (KHA), will provide professional consulting services and develop a Strategic Plan for the implementation of CPTED initiatives. KHA previously developed a Comprehensive Traffic Plan and assisted the Village to obtain Miami-Dade County's approval to lower speed limits on several local streets. Through its prior professional services to the Village, KHA is extremely familiar with the issues of the Village and has developed a database of resources that could be built upon to develop the CPTED plan. An outline of the scope of services and fee proposal follows.



SCOPE OF SERVICES

Task 1 - Data Collection

This task includes services to collect data in the study area and adjacent areas of influence. The areas of influence shall be limited to areas directly abutting the study area. KHA will attend a kick-off meeting organized by the Village of Biscayne Park with area stakeholders. The intent of the kick-off meeting is to facilitate a discussion regarding the identification of issues, a project timeline, and project goals and objectives. KHA will compile the data listed below for use in Task 2:

1. Crime data (to be provided by the Village of Biscayne Park)
2. Traffic data (volumes and speed counts)
3. Traffic control devices
4. Right-of-way maps
5. Pedestrian and Bicycle facilities
6. Street lighting
7. Aerial photography
8. Photographs of the study area

KHA will meet with the Village of Biscayne Park Police Division to obtain the crime data and reports for the most recent five (5) years. The data will be collected in electronic format where available. Data entry and/or conversion from paper files are not included in this scope of services.

Field reviews will be conducted to develop an inventory of pedestrian and bicycle facilities, a qualitative assessment of street lighting, a qualitative assessment of the condition of the public right-of-way and maintenance of private property, existing roadway characteristics, and traffic signs and control features. The traffic data collected for previous studies will be utilized where feasible. In addition, KHA will collect a maximum of twenty five (25) 24-hour volume counts and ten (10) 24-hour speed counts. These count data will be used to determine the effectiveness of any previously implemented traffic management measures and to develop additional traffic management improvements.

Task 2- Inventory and Analysis

This task includes services to analyze the data collected in Task 1 in order to draw conclusions about the real and perceived crime and traffic issues within the study area. This task will generally consist of written summaries and interpretations of the data. KHA will provide a summary of the following within the study area:

1. Crime statistics and patterns
2. Lighting levels
3. Traffic issues
4. General condition of public right of way (ROW)



5. General maintenance of private property
6. Pedestrian and bicycle facility deficiencies

Task 3 - Strategic Implementation Plan

Based on the findings of Tasks 1 and 2, KHA will prepare a Strategic Implementation Plan for CPTED initiatives. This Strategic Implementation Plan will generally consist of recommendations in two major areas:

1. Public Projects and Initiatives
2. Ordinances and Enforcement Initiatives

For each of the areas listed above, KHA will identify projects, initiatives, and/or policy issues that should be addressed by the Village of Biscayne Park. We anticipate that some recommendations may be implemented immediately, other recommendations may require several months to years to implement, and other recommendations may be long-term CPTED initiatives. This Strategic Plan will include a proposed CPTED Program outlining projects and budgets for the Village. Below is a list of some initiatives we anticipate will be included in the Strategic Plan:

1. Streetlighting
2. Traffic calming/traffic flow modifications
3. Pedestrian and bicycle facilities
4. Neighborhood signage
5. Neighborhood beautification
6. Community patrol/crime watch
7. CPTED ordinance
8. Partnerships with other local governments

As part of the process of developing the Strategic Implementation Plan, KHA will attend a total of three (3) workshops:

1. One (1) kick-off meeting organized by the Village of Biscayne Park to obtain stakeholder input for the study.
2. One (1) workshop organized by the Village of Biscayne Park to discuss the preliminary recommendations with area stakeholders. Comments and feedback received in this workshop will be incorporated into a Draft Strategic Implementation Plan.
3. One (1) Village Commission meeting upon completion of a Draft Strategic Implementation Plan, to present recommendations. Comments and feedback received from the Commission will be incorporated into a Final Strategic Implementation Plan.



ADDITIONAL SERVICES

The following tasks are not part of the initial scope of services, but may be included as additional services if requested by the Client. These services may include, but are not limited to:

1. Attendance at additional meetings, including meetings with the Village Commission, Village and/or agency staff, and public hearings
2. Additional traffic data collection
3. Design services
4. Permitting and regulatory assistance
5. Forensic (expert witness) services
6. Site/Civil Engineering
7. Construction phase services
8. Environmental analysis and engineering
9. Surveying

DELIVERABLES

KHA will prepare ten (10) bound copies and one electronic copy of a draft final report for review and comments by the Village of Biscayne Park. Ten (10) bound copies of a final report addressing comments will be provided to the Village of Biscayne Park. The report will also be provided in electronic format suitable for reproduction and posting to the Village's web site.

SCHEDULE

We will provide our services expeditiously as practicable to meet a mutually agreed upon schedule. We anticipate a four (4) to five (5) month schedule for completion.

FEE AND BILLING

KHA will accomplish the services outlined in Tasks 1 through 3 for the lump sum budget of \$39,200.00. Any additional services will be billed at our normal hourly rates in effect at the time the services are provided. Expenses for the project such as in-house duplicating, facsimile, local mileage, telephone, postage, in-house blueprinting, computer time, and word-processing are included in lump sum labor fee. Other direct expenses, if required, will be billed at 1.15 times cost.

The following task items represent a breakdown of the lump sum amount for reference:

Task 1 – Data Collection	\$9,500.00
Task 2 – Inventory and Analysis	\$10,000.00
Task 3 – Strategic Implementation Plan, Meetings and Deliverables	\$19,700.00

LUMP SUM \$39,200.00



Fees are payable monthly based upon the percent complete of the lump sum amount completed at invoice date. Billing will be due and payable within twenty-five (25) days.

CLOSURE

In addition to the matters set forth herein, our agreement shall include, and shall be subject to, the Standard Provisions attached hereto and hereby incorporated herein. The term "Client" as used in the attached Standard Provisions shall refer to **Village of Biscayne Park**.

If you concur in the foregoing and wish to direct KHA to proceed with the aforementioned services, please execute the enclosed copy of this letter agreement in the space provided and return the same to the undersigned. Fees and times stated in this agreement are valid for sixty (60) days after the date of agreement by the Consultant.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Gregory S. Kyle, AICP
Vice President

Attachment: Standard Provisions

Agreed to this ____ day of _____, 2008.

Village of Biscayne Park

By: _____

Title: _____

Witness: _____

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform additional services ("Additional Services"), and such Additional Services shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for the performance of any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, postage, and word processing. Other direct expenses will be billed at 1.15 times cost. Technical use of computers for design, analysis, GIS, and graphics, etc., will be billed at \$25.00 per hour.

(2) **Client's Responsibilities.** In addition to other responsibilities described herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.
- (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, zoning or other land use regulations, etc., upon all of which the Consultant may rely.
- (d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.
- (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.
- (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require or the Consultant may reasonably request in furtherance of the project development.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope and timing of the Consultant's services or any defect or noncompliance in any aspect of the project.
- (i) Bear all costs incident to the responsibilities of the Client.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work timely after receipt of an executed copy of this Agreement and will complete the services in a reasonable time. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions:

- (a) Invoices will be submitted periodically, via regular mail or email, for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services until all amounts due are paid in full.
- (b) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing.
- (c) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Any authorization or adaptation will entitle the

Consultant to further compensation at rates to be agreed upon by the Client and the Consultant. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Only printed copies of documents conveyed by the Consultant may be relied upon. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any material change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care.** In performing its professional services, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for lost profits or consequential damages, for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(11) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(12) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(13) **Hazardous Substances and Conditions.**

(a) Services related to determinations involving hazardous substances or conditions, as defined by federal or state law, are

limited to those tasks expressly stated in the scope of services. In any event, Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation.

(b) The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated. The parties shall decide if Consultant is to proceed with its services and if Consultant is to conduct testing and evaluations, and the parties may enter into further agreements as to the additional scope, fee, and terms for such services.

(14) Construction Phase Services.

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(15) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(16) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(17) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Florida. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.